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EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ERIK A LANDIN on behalf of herself
and all others similarly situated,

Plaintiff,

v.

LOS ANGELES CELLULAR TELEPHONE
COMPANY d/b/a L.A. CELLULAR OF
CALIFORNIA, a California
corporation,

Defendant.

Case No.

CLASS ACTION

COMPLAINT FOR
PRELIMINARY AND
PERMANENT INJUNCTIVE
RELIEF AND RESTITUTION
UNDER BUSINESS AND
PROFESSIONS CODE §§
17200 AND 17500
FOR:

- (1) UNTRUE AND
MISLEADING
ADVERTISING; AND
- (2) UNFAIR COMPETITION

AND FOR VIOLATION OF THE
CALIFORNIA UNFAIR
BUSINESS PRACTICES ACT

Complaint LJ24

FILED

LOS ANGELES SUPERIOR COURT

JAN 26 1996

JOHN A. CLARKE, CLERK

BY M. AMAR, DEPUTY

1 Plaintiff ERIKA LANDIN, individually and on behalf of a
2 class of persons similarly situated, complains against the
3 defendant LOS ANGELES CELLULAR TELEPHONE COMPANY d/b/a L.A.
4 CELLULAR OF CALIFORNIA, and states as follows:

5 NATURE OF CASE

6 1. This class action complaint asserts causes of action
7 against defendant for violations of the California Unfair
8 Business Practices Act ("CUBPA") and for unjust enrichment.

9 2. Plaintiff alleges that defendant engages in unfair or
10 deceptive acts and practices by: (a) refusing to automatically
11 credit its customers' bills for a "dropped call"; (b)
12 concealing from its customers that it will issue airtime credit
13 for a "dropped call" upon the customer's request; and (c)
14 omitting any definition of the term "dropped call" in its
15 written publications and promotional materials circulated to
16 its customers.

17 3. Plaintiff further alleges that defendant engages in
18 these deceptive acts and practices so that it may be unjustly
19 enriched at the expense of all class members.

20 4. Plaintiff and the thousands of other cellular phone
21 customers on whose behalf they sue have been damaged by
22 defendant's unfair and deceptive conduct.

23 PARTIES

24 5. Plaintiff ERIKA LANDIN ("LANDIN") is an individual
25 residing in Los Angeles, California. Plaintiff has been a
26 customer of defendant for at least 1 year. Plaintiff has been
27 damaged by the actions of defendant as described in this
28 Complaint.

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6. Defendant LOS ANGELES CELLULAR TELEPHONE COMPANY
d/b/a L.A. CELLULAR OF CALIFORNIA ("L.A. CELLULAR") is a
cellular phone service provider which is authorized to do and
does business in Los Angeles County and the State of
California.

CLASS ALLEGATIONS

7. Plaintiff brings this action, on behalf of herself
and all other similarly situated as a class action pursuant to
§382 of the California Code of Civil Procedure and §1781 of the
California Civil Code. The class which plaintiff seeks to
represent is composed of and defined as: All persons and
entities who are, or were, cellular customers of L.A. Cellular
who have experienced "dropped calls" for which they have
received no credit. Specifically excluded is the defendant;
its officers, directors and employees; its affiliates,
divisions and subsidiaries; and federal, state or local
governmental entity.

8. The action has been brought and may properly be
maintained as a class action pursuant to the provisions of §382
and the California Code of Civil Procedure and §1781 of the
California Civil Code because:

a. The class is so numerous that individually
joining all members is impracticable under the
circumstance of this case. Although the exact number of
class members is unknown to plaintiff at this time,
plaintiff is informed and believes based on the number of
customers of defendant that the class includes hundreds of
thousands of persons and entities.

1 b. Common questions of law and fact exist as to all
2 members of the class and predominate over any questions
3 which affect only individual members of the class. These
4 common questions of law and fact include, without
5 limitation:

6 i). whether defendant's conduct violates §17200
7 et. seq of the California Business and Professions
8 Code;

9 ii). the amount of additional revenue and
10 profits obtained by defendant and attributed to its
11 unlawful conduct;

12 iii). the appropriate nature of class applied
13 equitable relief; and

14 iv). whether the members of the class have
15 sustained damages and, if so, what is the proper
16 measure and appropriate formula to be applied in
17 determining damages.

18 c. Plaintiff's claims are typical of the claims of
19 the members of the class. Plaintiff and all members of
20 the class sustained damages and injuries arising out of
21 defendant's common course of conduct in violation of law
22 as complained of herein. The injuries and damages of each
23 member of class were caused directly by the defendant's
24 wrongful conduct in violation of common and statutory law
25 as alleged herein.

26 d. Plaintiff will fairly and adequately protect the
27 interests of the members of the class. Plaintiff is a
28

1 customer of L.A. Cellular and is an adequate
2 representative of the class as she has no interest which
3 are adverse to the interests of absent class members and,
4 like all members of the class, experienced "dropped calls"
5 for which she received no credit and was adversely
6 affected by defendant's actions. Plaintiffs has retained
7 counsel who has substantial experience and knowledge in
8 the prosecution and of complex class action litigation.

9 e. The marketing and policies and procedures
10 described were part of the common course of conduct of
11 representations or omissions of material information and
12 deceptive acts and practices concerning "dropped calls"
13 undertaken by defendant. As a result, the issues which
14 affect plaintiff and all members of the class in common
15 predominate over those which affect the interest of any
16 individual class member.

17 f. A class action is superior to other available
18 means for the fair and efficient adjudication since
19 individual joinder for all members of the class is
20 impracticable. Furthermore, as the damages suffered by
21 each individual member of the class may be relatively
22 small, the expenses and burden of individual litigation
23 would make it difficult or impossible for individual
24 member of the class to redress the wrongs done to them.
25 The cost to the court system for adjudications of such
26 individualized litigation would be substantial.
27 Individualized litigation would also present the potential
28 for inconsistent or contradictory judgments.

1 9. Plaintiff and the class assert that their damages
2 should be awarded on a fluid recovery basis.

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4 SUBSTANTIVE ALLEGATIONS

5 10. A "dropped call" is a call which is involuntarily
6 terminated or dropped on a cellular phone. - When a dropped call
7 occurs, plaintiff and the class must either:

- 8 a. redial the telephone call that was dropped; or
9 b. have the party at the other end of the telephone
10 call place the call again.

11 11. When either (a) or (b) occurs, the redialed phone
12 call is billed by defendant as the beginning of a new call.
13 All calls are billed by defendant in one minute increments, as
14 opposed to in fractions of the minute of airtime used.

15 12. It is defendant's customary business practice to
16 issue credit to its customers for one minute of airtime when a
17 dropped call occurs, but only upon the request of the customer.

18 13. Defendant, however, conceals the fact that it will
19 issue airtime credit for its customers' dropped calls upon
20 request. Defendant conceals this fact so that (a) its
21 customers will not request credit for a dropped call; and (b)
22 so defendant is unjustly enriched through its customers'
23 payment for the airtime they incur when a call drops.

24 14. Defendant also conceals from its customers the
25 meaning of the term "dropped call." By doing so, the vast
26 majority of defendant's customers are completely ignorant of
27 both the term "dropped call" and of the fact that defendant
28 issues credit to its customers for dropped calls upon their

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request.

15. The most that defendant discloses to its customers is that, if the customer has "questions", he or she should call the Customer Care Department.

16. If the customer elects to call defendant's Customer Care Department, the customer must pass through a series of electronic menus, none of which refer to "dropped calls", then wait for a period of time which often exceeds ten minutes before speaking with a live operator who informs the customer that credits for dropped calls are issued only if reported after the billing statement is issued.

17. Once the billing statement is issued, the customer must repeat the procedures enumerated in paragraph 16 and then engage in a time-consuming and burdensome reporting procedure about their dropped calls.

18. By requiring its customers to engage in such onerous reporting procedures, defendant unfairly dissuades its customers from making any inquiries about and/or seeking credit for a dropped call.

19. Defendant further engages in unfair and deceptive acts by refusing to issue an automatic credit to its customers' accounts for dropped calls. Dropped calls are easily ascertainable from the customer's bill since two calls are generally made to the same number within minutes or even seconds. Defendant, however, does not issue automatic credits to its customers' accounts so that its customers have to pay for the airtime they incur when a call drops.

20. In contrast to the unfair or deceptive practices of

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defendant, many other cellular companies do issue "automatic" credits to their customers for dropped calls. For example, the Service Plan of AT&T Wireless Service/Cellular One in Denver, Colorado, specifically provides:

Calls may be "dropped" or involuntarily disconnected for various reasons. If you place a call and it drops, our system will automatically credit your account for one minute of airtime when you reconnect that same number within one minute.

(Emphasis supplied and emphasis in original).

21. Similarly, GTE MobilNet's User Manual in Houston, Texas, specifically provides:

If a call is improperly dropped, your account will be automatically credited with one minute of airtime if you redial the number within two minutes. (Credit is designated by an asterisk as shown.)

(Emphasis supplied).

22. The AT&T Wireless Service "Rates and Coverage" Brochure in Dallas, Texas, likewise provides:

Automatic Call Credit Guarantees. If you place a call and it is dropped, you will automatically be credited for one minute of day airtime when you call the same number back within one minute. Just re-dial and keep talking.

. . . .

An automatic dropped call credit will be provided for airtime charges above the minutes included in your package plan, when a call is dropped by our switch on an outbound call, within the home coverage area, and the number is redialed and connected within 60 seconds.

23. By refusing to issue an automatic credit to its customers' bills for dropped calls, defendant is engaging in unfair conduct and continues to be unjustly enriched in the amount of millions of dollars.

1 24. As a result of defendant's unfair and deceptive acts
2 and practices, plaintiff and the class have been damaged.
3

4 FIRST CAUSE OF ACTION

5 [For Violation of the California Unfair Business Practices Act
6 Business & Professions Code §17200 - Unfair and Misleading
7 Advertising]

8 25. Plaintiff repeats and realleges each and every
9 allegation in paragraphs 1 through 24 as if fully set forth
10 herein.

11 26. The acts and practices described above, were and are
12 likely to mislead the general public and therefore constitute
13 unfair or fraudulent business practices within the meaning of
14 Business & Professions Code §17200.

15 27. Defendant engages in unfair and deceptive trade
16 practices by making the material omissions, concealments, and
17 suppressions as described herein. Defendant employs its unfair
18 and unlawful scheme for the purpose of inducing reliance and
19 with the intent to deceive and mislead plaintiff and the class.

20 28. Defendant's unfair and deceptive practices were
21 committed in connection with the conduct of trade and commerce.

22 29. By virtue of the foregoing, plaintiff and the class
23 have suffered substantial damages.
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SECOND CAUSE OF ACTION

[For Violation of Business & Professions Code §17500]

30. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 29 as if fully set forth herein.

31. The advertising, labeling and all other promotional efforts undertaken by defendant constitutes advertising devices disseminated by defendant which contained and continued to contain statements concerning "dropped calls" which are untrue and/or misleading, and which are known, or by the exercise of reasonable care should have been known, to be untrue or misleading by defendant, in violation of California Business & Professions Code §17500, et seq.

THIRD CAUSE OF ACTION

(Unjust Enrichment)

32. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 31 as if fully set forth herein.

33. As a result of the unfair and deceptive acts and practices of defendant, defendant has been and continues to be unjustly enriched through the retention of money belonging to plaintiff and the class.

34. Defendant's unjust enrichment has been at the expense of and to the detriment of plaintiff and the class.

35. Defendant's unfair and deceptive conduct is against the fundamental principles of justice, equity and good conscience.

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PRAYER FOR RELIEF

WHEREFORE, plaintiff, individually and on behalf of a class of persons similarly situated, respectfully prays that this Honorable Court:

1. Pursuant to the Business and Professions Code §§17203 and 17535, and pursuant to the equitable powers of this court, Plaintiff prays that the Defendants be preliminarily and permanently enjoined to cease and desist all false and misleading promotional activities and practices and the acts of unfair competition as alleged above.

2. Pursuant to Business and Professions Code §§17203 and 17535, and pursuant to the equitable powers of this court, Plaintiff prays that Defendants be ordered to disgorge for the benefit of the class its profits and composition and/or restore to the public all funds acquired by means of any act or practice declared by this court to be unlawful or fraudulent or to constitute unfair competition under Business and Professions Code §§17200 et seq., or misleading advertising under §17500 et seq.

3. Pursuant to Business and Professions Code §§17203 and 17535, and pursuant to the equitable powers of this court, Plaintiff prays that Defendants be ordered to provide to the public restitution as to all funds lost as a result of any act or practice declared by this court to be unlawful or fraudulent or to constitute unfair competition under Business and Professions Code §17200 et seq., or misleading advertising under §17500 et seq.

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1 4. Certify this claim as a class action with the named
2 plaintiff as class representatives and her attorneys as class
3 counsel on behalf of a class of all persons similarly situated;

4 5. Enter judgment against defendant for damages
5 sustained by plaintiff and the class by reason of the acts
6 alleged here;

7 6. Enter an award against defendant for costs and
8 expenses, including costs relating to the retaining of experts,
9 and reasonable attorney's fees incurred for and on behalf of
10 the named plaintiff and members of the class in connection with
11 the prosecution of this cause;

12 7. Enter an order permitting the use of fluid recovery
13 to assess the damages of plaintiff and the class; and

14 8. Order such other and further relief as this Court may
15 deem fit to grant in fashioning a remedy for the named
16 plaintiff and the class she represents.

17 9. For such other and further relief as the Court deems
18 appropriate.

19 Dated: January 26, 1996 Respectfully submitted,

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22 By Eric D. Freed ^{LLC}

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DECLARATION OF SERVICE BY MAIL

Connie Forsén declares as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, California 90071, in said County and State; I am readily familiar with Gibson, Dunn & Crutcher's practice in its above-described Los Angeles office for the collection and processing of correspondence for mailing with the United States Postal Service; pursuant to that practice, envelopes placed for collection at designated locations during designated hours are deposited with the United States Postal Service with first class postage thereon fully prepaid that same day in the ordinary course of business; on the 6th day of March, 1996, I served the attached:

NOTICE OF REMOVAL

by placing a true copy thereof in an envelope addressed to each of the persons named below at the address shown:

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and by then sealing and placing said envelope(s) for collection at a designated location at Gibson, Dunn & Crutcher's offices at 2029 Century Park East, Los

Angeles, California 90067 during designated hours, for mailing on the above date, following ordinary business practice.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 6th day of March, 1996, at Los Angeles, California.

Connie Forsén

LT960660.037/0+

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Erika Landin

CASE NUMBER
BC143305

VS.

PLAINTIFF(S)

Los Angeles Cellular Telephone
Company

TENTATIVE RULING

DEFENDANT(S)

#1, BC 143305

Hearing Date: July 29, 1998

Dept. 54, Judge Ernest M. Hiroshige

MOTION FOR SUMMARY ADJUDICATION

MOVING PARTY: Defendant Los Angeles Cellular Telephone Company

RESPONDING PARTY: Plaintiff

T/R: THE MOTION IS DENIED.

Renewal of Motion

Under CCP § 1008(b), if the prior motion was denied, the moving party may later renew the motion by showing "new or different facts, circumstances, or law" even after the 10-day limit applicable to a motion for reconsideration. Weil & Brown, Cal. Prac. Guide, Civ. Proc. Bef. Trial, § 10:373. The Gates declaration indicates that since the court's minute order was entered on 12/19/97 (Exh. C), the Court of Appeal issued the decision in Day v. AT&T Corp. (1998) 63 Cal. App.4th 325 (Exh. D). Gates Decl., ¶5. The instant motion is therefore a proper renewal of the court's 12/19/97 ruling on summary judgment.

Section 17500 Cause of Action

Cal. Bus. & Prof. Code § 17500 prohibits the dissemination of "untrue or misleading" advertisements. In Day v. AT&T Corp. (1998) 63 Cal. App.4th 325, 74 Cal.Rptr.2d 55 (Gates Decl., Exh. D), plaintiffs filed a complaint for injunctive relief claiming that

defendants, sellers of prepaid telephone cards, engaged in unfair business practices and false and misleading advertising in violation of BPC §§ 17200 and 17500 by failing to "reveal to the consumer, prior to purchase, that calls made with these cards are, in fact, rounded up to the next higher minutes." Id. at 58.

L.A. Cellular argues that Day stands for the proposition that there is no duty to advertise the dropped-call policy if the policy is disclosed in the tariff. However, the Day court specifically found that if carriers choose to advertise, "they must do so with sufficient accuracy that they do not risk misleading or deceiving the consumer. We hold that under California's unfair business practices and deceptive advertising provisions respondents are prohibited from disseminating misleading or deceptive packaging materials with their prepaid phone cards." Id. at 62-63. Day did not shield defendants from liability on the basis that the advertisements did not contradict the rounding-up policies set forth in the tariff. The court stated that once the cards had been purchased and used, the plaintiffs received exactly what they paid for. Id. at 64. Rather, the court held that there was a claim under sections 17200 and 17500 because the advertisements which the defendants did run (i.e. the packaging representing a certain number of minutes) were allegedly misleading.

Day is similar to the instant case, where plaintiff is not claiming a violation of the tariff, but rather a violation of the California statute prohibiting unfair advertising practices. As in Day, plaintiff here is entitled to bring a claim under section 17500 on the basis that once defendant chose to advertise, it had a duty to do so without misleading the consumer. As discussed in the ruling on defendant's prior MSJ, there is a triable issue of fact as to whether the defendant concealed its dropped calls policy. Exh. C, p.3. Day does not alter the ruling. The MSA as to the 2nd c/a for violation of section 17500 is denied.

Unjust Enrichment Cause of Action

Defendant argues that because the plaintiff had an express, written contract with L.A. Cellular, the c/a for unjust enrichment is barred. However, unlike the plaintiff in Lance Camper Manuf. Corp. v. Republic Indemnity Co. of Amer. (1996) 44 Cal.App.4th 194, plaintiff in the instant case does not seek to enforce an express contract while asserting a contradictory claim for unjust enrichment. Although plaintiff admitted in her deposition that she entered into a cellular-service agreement with L.A. Cellular (Exh ← E, pp.22-24,31), the evidence does not show that the express contract covered the same terms (dropped-call credits) as are at issue in the claim for unjust enrichment, or that plaintiff is attempting to plead an express contract on these grounds. Likewise, Lloyd v. Williams (1964) 227 Cal.App.2d 646 held that the plaintiff could not introduce certain evidence at trial which related to the defendant's misrepresentations, because such evidence was inconsistent with the allegations of the pleadings and

the pretrial conference order. Lloyd at 649. Such is not the case here.

Finally, the argument that the claim for unjust enrichment is subsumed by the 1st c/a for violation of section 17200 is unsupported. Security Officers Service, Inc. v. State Compensation Ins. Fund (1993) 17 Cal.App.4th 887 does not stand for such a proposition, but merely noted that the plaintiff-insured conceded that the c/a for fraudulent claims practices was part of the c/a for breach of the implied covenant of good faith and fair dealing. Security at 899. Therefore, the MSA as to the 3rd c/a for unjust enrichment is denied.

The court makes all evidentiary rulings consistent with the findings of this analysis.

Plaintiff to give notice.

Date:

Ernest M. Hiroshige
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ERIKA LANDIN

CASE NUMBER
BC 143305

PLAINTIFF(S)

VS.

LOS ANGELES CELLULAR TELEPHONE
COMPANY

TENTATIVE RULING

DEFENDANT(S)

#1, BC 143305

Hearing Date: July 31, 1998

Dept. 54, Judge Ernest M. Hiroshige

MOTION FOR ORDER FOR CLASS CERTIFICATION

MOVING PARTY: Plaintiff Erika Landin

RESPONDING PARTY: Defendant LA Cellular Telephone

T/R: THE MOTION IS GRANTED.

Ascertainable Class

Plaintiff has established that the class ("All Los Angeles Cellular Telephone Company customers from January 26, 1992 through the present who have experienced 'dropped calls' for which they have received partial or no credit") is ascertainable. Daar v. Yellow Cab. Co. (1967) 67 Cal.2d 695. Although defendant argues that it cannot distinguish between dropped calls and calls that are dropped voluntarily (Fowler Decl., ¶3), plaintiff has submitted evidence to show that defendant can estimate the number of dropped calls per month and the revenue stream associated with dropped calls. Reply, Exhs. A-C. The California Supreme Court has held that "fluid recovery" may be appropriate in consumer class actions where damage distribution poses special problems. "Often, proof of competent evidence is not feasible...In addition, consumers are not likely to retain records of small purchases for long periods of time." State of Calif. v. Levi Strauss & Co. (1986) 41 Cal.3d 460, 471-72. Further, notice to the class members would be reasonably

included in monthly billing statements. Plaintiff has met her burden of proving that the class is ascertainable.

Commonality of Interest

Plaintiff has established that common questions of law and fact predominate. Plaintiff raises common issues regarding information provided by defendant on the tariff and dropped call credit policy. Landin Decl., ¶¶2-6. Pursuant to Cal. Bus. & Prof. Code § 17200 et seq., plaintiff must show that members of the public are likely to be deceived. Restitution may be ordered without individualized proof of deception, reliance, and injury if the remedy is necessary to prevent the use of the unfair practice. Committee on Children's TV, Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 211. In class actions under the statute, restitution may be ordered in the absence of proof of the individual's lack of knowledge of the alleged wrongful conduct if the court determines that such a remedy is necessary to deter future violations or to foreclose the defendant's retention of ill-gotten gains. Fletcher v. Security Pacific National Bank (1979) 23 Cal.3d 442, 454.

Adequacy of Representation

Plaintiff has established that she has claims typical of the class and that she can adequately represent the class. Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d 462, 470. Unlike the proposed class representative in Caro v. Procter & Gamble Co. (1993) 18 Cal.App.4th 644, the evidence does not indicate that plaintiff's claims of damages, versus simply their computation, are atypical of the class members. Caro at 665. Moreover, although plaintiff may have conceded in her deposition that she does not understand all of the intricacies of this action, she has demonstrated a familiarity with its outlines. In re Diasonics Securities Litigation (N.D. Calif. 1984) 599 F.Supp. 447, 453. For example, plaintiff testified to the basic definition of "dropped calls" and stated that the complaint involves L.A. Cellular having "deceived people by not telling them that they can get credit for their dropped calls." Reply, Exh. E, Landin Depo., 8:1-12. The named plaintiffs in Edgington v. R.G. Dickinson & Co. (D. Kan. 1991) 139 F.R.D. 183 were of advanced age and in poor health. They had "lapses in memory and contradiction in testimony" which is not alleged here. Edgington at 195-96.

Plaintiff has met her burden of establishing the requisite elements of class certification. The motion is granted.

Plaintiff to give notice.

Date:

Ernest M. Hiroshige
Judge of the Superior Court

EXHIBIT 3

COPY FOR CONFORMING

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Attorneys for Plaintiff

[Other Plaintiff Counsel Appear on Signature Pages]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ERIKA LANDIN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

LOS ANGELES CELLULAR TELEPHONE
COMPANY,

Defendant.

CASE NO. BC 143305

Assigned to the Honorable Ernest M. Hiroshige

**STIPULATION AND [PROPOSED] ORDER
VACATING TRIAL AND PRE-TRIAL
DATES AND STAYING PROCEEDING**

WHEREAS, there is pending in the Superior Court of the State of California, County of Los Angeles, an action styled as a class action entitled *Spielholz, et al. v. L.A. Cellular, et al.*, Case No. BC186787 ("*Spielholz*") in which plaintiffs make allegations of fraud, false advertising, and unfair business practices under California Business and Professions Code Sections 17200 et seq. against defendant herein Los Angeles Cellular Telephone Company

ORIGINAL

JUL 06 1999

LOS ANGELES
SUPERIOR COURT

1 (now AT&T Wireless Services doing business as AB Cellular Holding, LLC, but referred to
2 herein as "L.A. Cellular");

3 WHEREAS, on February 11, 1999 the Court in *Spielholz* granted L.A. Cellular's
4 motion to strike the plaintiffs' claims for monetary damages on the ground that such claims
5 are preempted by Section 332(c)(3)(A) of the Federal Communications Act;

6 WHEREAS, on May 7, 1999 plaintiffs in *Spielholz* filed a petition for writ of mandate
7 or other extraordinary relief seeking immediate review by the California Court of Appeal of
8 the decision granting L.A. Cellular's motion to strike;

9 WHEREAS, on June 7, 1999, plaintiffs' counsel in *Spielholz* advised the Clerk of the
10 California Court of Appeal of its intention to file a petition with the Federal Communications
11 Commission ("FCC") requesting a declaratory ruling on whether the Federal Communications
12 Act preempts the state courts from awarding monetary relief as a remedy for fraud and false
13 advertising claims, a copy of which letter is attached hereto as Exhibit A;

14 WHEREAS, on June 15, 1999 the Court of Appeal of the State of California, Second
15 Appellate District has entered an Order, attached hereto as Exhibit B, staying all proceedings
16 in the trial court and Court of Appeals in the *Spielholz* action pending a ruling by the FCC on
17 the petition for a determination whether the Federal Communications Act preempts state
18 courts from awarding monetary relief as a remedy for fraud and false advertising claims;

19 WHEREAS, counsel for the parties in the action pending before this Court agree that
20 such a decision by the FCC may have an impact on this action; and

21 WHEREAS, counsel for the parties in this action desire to notify this Court of the
22 Court of Appeal's Order and, consequently, seek an Order from this Court staying all
23 proceedings in this case until the FCC rules on the petition filed therewith;

24 IT IS HEREBY AGREED AND STIPULATED among the parties, through their
25 respective counsel of record, that:

26 (1) All pre-trial and trial dates in this matter shall be vacated;

27 (2) All trial, pre-trial, and discovery proceedings in this matter shall be stayed
28 pending a decision by the FCC;

1 (3) L.A. Cellular agrees to provide counsel for plaintiff with copies of any
2 documents submitted to the FCC by any party concerning the above-referenced petition,
3 documents filed with the Court of Appeal, and pleadings in the *Spielholz* action that led to the
4 Court of Appeal's proceedings referenced herein.

5 (4) L.A. Cellular agrees to promptly notify counsel for plaintiff of any ruling by the
6 FCC or the Court of Appeal; and

7 (5) If plaintiff in *Spielholz* fails to file a petition with the FCC within sixty (60)
8 days of entry of this Order, the stay in this case shall be lifted.

9
10 DATED: June 30, 1999

GIBSON, DUNN & CRUTCHER LLP

11
12 By: 
13 Steven E. Sletten

14 Attorneys for Defendant

15 DATED: June __, 1999

16 LAW OFFICES OF LIONEL Z. GLANCY
17 LAW OFFICES OF KEITH S. SHINDLER
18 MUCH SHELIST FREED DENENBERG AMEND
19 BELL & RUBENSTEIN P.C.

20 By: _____
21 Mary Jane Edelstein Fait

22 Attorneys for Plaintiff

23 ORDER

24 IT IS SO ORDERED.

25 DATED: JUL 06 1999, 1999

26 ERNEST M. HIROSHIGE

27 The Honorable Ernest M. Hiroshige
28 Judge of the Superior Court

(3) L.A. Cellular agrees to provide counsel for plaintiff with copies of any documents submitted to the FCC by any party concerning the above-referenced petition, documents filed with the Court of Appeal, and pleadings in the *Spielholz* action that led to the Court of Appeal's proceedings referenced herein.

(4) L.A. Cellular agrees to promptly notify counsel for plaintiff of any ruling by the FCC or the Court of Appeal; and

(5) If plaintiff in *Spielholz* fails to file a petition with the FCC within sixty (60) days of entry of this Order, the stay in this case shall be lifted.

DATED: June 30, 1999

GIBSON, DUNN & CRUTCHER LLP

By: 

Steven E. Sletten

Attorneys for Defendant

DATED: June 30, 1999

LAW OFFICES OF LIONEL Z. GLANCY
LAW OFFICES OF KEITH S. SHINDLER
MUCH SHELIST FREED DENENBERG AMEND
BELL & RUBENSTEIN P.C.

By: 

Mary Jane Edelstein Fait

Attorneys for Plaintiff

ORDER

IT IS SO ORDERED.

DATED: _____, 1999

The Honorable Ernest M. Hiroshige
Judge of the Superior Court